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OFFICE OF PETITIONS

In re Application of :
Nakajima et al. : DECISION ON PETITION TO
Application No. 09/679,882 : WITHDRAW HOLDING OF
Filed: 5 October, 2000 : ABANDONMENT
Attorney Docket No. Q61079 :

This is a decision on the petition filed on 6 June, 2006, which is treated as a petition to withdraw any holding of abandonment, and reset the period for reply to the final Office action, in the above-identified application.

The petition is **GRANTED**.

A review of the record reveals that a final Office action was mailed on 8 March, 2006, setting forth a three (3) month shortened statutory period for reply.

Petitioners assert that the final Office action mailed on 8 March, 2006, was never received, and requests that the Office action be remailed, and a new period for reply set.

In the absence of any irregularity in the mailing of the final Office action, there is a strong presumption that the final Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the final Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53

(November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the final Office action may have been lost after receipt rather than a conclusion that the final Office action was lost in the mail.

A review of the record indicates that the Office action was properly mailed to the practitioner of record at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the Office action on the part of the United States Patent and Trademark Office.

In support of the petition, the petitioners have submitted verified statements from the practitioner, Nataliya Dvorson, stating that the Office communication was not received by the practitioner, and attesting to the fact that a search of the file jacket indicates that the Office action was not received. Copies of docket records for the above-identified application where the non-received Office action would have been entered had it been received and docketed were filed on 15 May, 2006.

The petitioners have made a sufficient showing of nonreceipt of the Office action. Any holding of abandonment is withdrawn, and any Notice of Abandonment is vacated.

The petition is GRANTED.

The application file is being referred to Technology Center 2600 technical support staff for remailing of the final Office action. The period for reply will be reset from the mailing date thereof.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



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